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## REVIEWS AND CRITICISMS

dinavian and English law. The principal other jurists considered in the chapter are Kuntze, Brinz, Bekker, Windscheid (common law), Mommsen (history of Roman law), Paul Roth, Ficker, Stobbe, Gierke (German law), Unger, Dernburg (territorial law), Goldschmidt, Endemann (commercial law), Bülow (civil procedure), Glaser (criminal law and procedure), Gneist (administrative law), Schulze, Laband, G. Meyer (constitutional law), v. Bulmerinq (international law).

The preceding outline includes only the names of the more prominent jurists discussed. The aim throughout the work has been to give a comprehensive account of German legal science at the different periods of its development, and this aim has been faithfully pursued in the last part of the work, notwithstanding the vastness of the material to be digested. Biographical statements and a description of their principal works may be found concerning most of the writers mentioned, either in the text or in the elaborate notes. With regard to the leading jurists the author takes special pains to trace the influence of the home and of the university so that the philosophic attitude of the writer may be more readily comprehended; and in the discussion of the works of a particular writer there is depicted the history of his growth and development to the maturity of his powers. On every hand our author points out the relation of the different works of the same jurist to each other, and their relation to and influence upon juristic science in Germany.

The work on the History of German Jurisprudence by Stintzing and Landsberg is truly a monumental work, the like of which does not exist in any other country. No one unacquainted with the boundless mass of juristic literature covered by the volumes under consideration can form a mental picture of the enormous amount of labor that our author has had to perform. All interested in German jurisprudence owe a debt of gratitude to Dr. Landsberg for having undertaken and so well performed such an arduous task.

E. G. LORENZEN.

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FESTBAND ANLASSLICH DES 25 JAHRIGEN BESTEHENS DER INTERNATIONALEN KRIMINALISTISCHEN VEREINIGUNG. Bulletin der Internationalen Kriminalistischen Vereinigung, Bd. XXI, Heft I, edited by Dr. Ernst Rosenfeld, Berlin, 1914. Pp. 443.

It is extremely difficult to give in brief a concept of the multifarious themes developed in this memorial collection. A common thread, however, runs through the whole volume; that thread is the inspiration which the I. K. V. has communicated to its members in many countries. The book is a collection of papers commemorative of the 25th anniversary of the Union. Thirty notable men have collaborated in it. Appropriately enough the opening paper is a brief history of the founding of the Union by Professor von Liszt, to whom with Van Hamel, of Amsterdam, and Prins, of Brussels, credit is due for the original conception of the Union. The I. K. V. grew, von Liszt says, from his editorial contacts with contributors to the *Zeitschrift für die gesamte Strafrechtswissenschaft*, which he and Dochow founded in 1881. In 1888 he, van Hamel and Prins drew up the statement of

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principles which for ten years was to serve as the Union's program. The first article of this platform frankly declared that crime and punishment must be considered no less from the sociological than from the juridical standpoint. The third called for preventive measures as well as punishment. The fourth demanded classification of criminals, particularly distinction between occasional and habitual criminals. Other practical issues were named, notably improvement of prisons and long terms for incorrigibles. The general object of the I. K. V. was declared shortly after by von Liszt to be the gradual reform of existing law to the intent that the function of punishment might be better formulated. On January 1, 1889, the I. K. V. came formally into existence. Its first general meeting was held in Brussels, August 7, of that year. In spite of some rebuffs the Union prospered and soon included in its membership a large number of the most important criminalists of Europe, and a few from America. The formation of national branches followed.

Professor Cuche in his paper declares that the I. K. V. by abrogating in 1897, the dogmatic Article II of its original statement of principles left itself, to say the least, in an equivocal position. Its very liberalism and freedom from dogma leaves the impression that it has no longer any precise aim. This is specially true of the national branches. For example, the French branch, he says, differs in no respect from such an organization as the Société des Prisons. As a remedy for this latitudinarianism he urges the Union to stand, say, for the principle that individualization of punishment is not primarily for the benefit of the individual criminal but for the "security and moral relief of the collectivity."

Professor von Jagemann of Heidelberg urges the claims of protection of childhood as the most effective protective measure against crime. Regierungsrat Lindenau in a brief but suggestive paper asks for more attention to the preventive aspects of the police service and concludes that the special training of higher police officials will secure this desirable end. Dr. Schneickert, writing on the control of international crime, reasserts the resolutions adopted by the I. K. V. at its Hamburg meeting in 1905, which called for the creation, in every modern state, of a special bureau for the repression of international crime. These bureaus are to be in constant and direct communication, and their data are to be worked up scientifically for the common benefit of international relations.

Professor Mayer of Strassburg contributes a lecture on the proper attitude of legislation in regard to "resistance to public authorities." It is liberal in tone and calls for reason and discretion in judges in dealing with such cases. Professor Torp pays a tribute to the I. K. V. for its influence in reforming Danish criminal law, particularly in the repeal of the law permitting corporal punishment, in new legislation for conditional sentences, treatment of tramps and beggars, and in the tendency to eliminate short sentences and to provide more rationally for juvenile delinquents. Professor Stjernberg sends a similar testimonial from Sweden. Direktor Schwander of the Ludwigsburg House of Correction describes the steady development of the idea of special

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institutions for those feeble minded and insane now held in penal institutions. He finds the best solution of the problem of the defective-delinquent in the Wurtemberg plan of committing them to "annexes to penal institutions." Dr. Paul Köhne outlines the contributions of the I. K. V. to the reform of procedure in juvenile cases; and advocates the principles, familiar to Americans, of judicial discretion, special children's courts, probation, and unification of all agencies for child welfare and protection.

Professor Henderson is represented by a paper on "Penology in the United States." He presents the leading ideas in the current movement for the reform of criminal procedure, and summarizes new developments in methods of studying crime, probation and parole. Courts of Morals and Mr. Randall's plan for a Central Board to determine methods of treating offenders committed to it also come in for considerable notice. It is to be regretted that no other American writer has shown sufficient interest to be included in this volume, for not a little of the energy and inspiration of the I. K. V. is traceable to American experiences with probation, parole, and children's courts. Professor Strassmann's paper on *Die Behandlung der Querulant* (the cranky, litigious, quarrelsome type) suggests the desirability of withdrawing this type from ordinary penal procedure and treating it as insane and irresponsible. With this should be compared Dr. Leppmann's address on *Sexuelle Fragen und Criminalität*, as illustrations of the increasing demand for the interpretation of many types of delinquency in terms of psychology. Dr. Leppmann summarizes recent progress in the domain of sexopathy; he shows, for instance, that many criminals commonly treated as burglars, assaulters, or pickpockets, are really sexopaths, and that for such cases psychological rather than penal treatment should be invoked. He is to be congratulated for his moderate and conservative views, which quite deliver him from the ranks of the sexologists.

Professor Garcon, of Paris, treats briefly of the tendency to take certain classes (juveniles, vagrants, beggars, criminal-insane, drunks) out of the penal category and to transfer them to that of public charity (*assistance publique*). Professor van Hamel discusses the reaction against rationalism and materialistic science in the Pragmatists, and in Bergson, Bernard Shaw, Chesterton, Maeterlinck, etc.; and shows how this tendency is mirrored in current penal philosophy. The recrudescence of "natural rights" is an illustration in point. He concludes that the modern criminalistic doctrines are based not on pure reason, but on optimism and humanity.

The paper on *Verbrecherkliniken*, by Professor Aschaffenburg, deserves far more extended notice than we can give here. He starts with the broad principle that criminal law is a branch of applied psychology as well as of jurisprudence, goes on to discuss the various meanings of the term, "criminal psychology," and concludes that the only way of fixing its meaning and of making it serviceable in practice is to establish criminological clinics, preferably in connection with universities. Dr. Karl Meyer of the Criminal Law Commission indicates the influence of the I. K. V. on recent German projects for reform of criminal

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law, especially with regard to juveniles, professional criminals and recidivists. Dr. Engelen on the basis of Dutch experience suggests as the proper treatment of beggars and vagabonds (which he makes synonymous) not punishment, but *sichernde Massnahmen*, (measures of prevention and surety), with wide discretion for judges. Professor Silovic's short paper proves that the principle of conditional sentence was well known and used in Croatia even in the 15th century. He has drafted a bill which embodies modern ideas on this important subject, and which seems altogether likely to become law very soon.

The most elaborate paper in the series is Professor Oetker's detailed monograph on abortion. He takes a liberal rather than the traditional legal view of the subject, but bears down very hard upon the professional abortionists in the project of law which he offers. Professor Heimberger points out that one of the chief objects of the I. K. V. has been to educate judges to realize that their function is not purely logical or mathematical, but that they must be concerned equally with measures for executing sentences of punishment, *i. e.*, with prison conditions and administration as well as with criminal codes and procedure. This principle was recognized in the earliest years of the Union and was frequently reaffirmed. The Copenhagen meeting in 1913 passed the following resolution, which is the summary of Heimberger's article: "The Congress observes that considerable progress yet remains to be realized in the professional education of magistrates charged with application of the penal law; it urges that, without neglecting general culture, the importance of which is essential, this education should, in the universities be turned in the direction of those sciences auxiliary to criminal law."

One of the most stimulating papers is Dr. Felisch's story of how modern treatment of juvenile delinquents has been profoundly influenced by the I. K. V. Indeed he calls the meeting of the Union at the prison of Moabit, December 5, 1891, the "birthday of modern reform in the treatment of youthful offenders." He shows how at every successive meeting the subject recurred, and how after 1901 the Juvenile Court became the special object of interest.

Professor Nabokoff pays high tribute to the late Professor Ivan Foinitzky, one of the earliest and most influential members of the I. K. V., and organizer and president for many years of the Russian branch. Dr. Kulischer follows crediting the Russian branch with such reform movements as the parole law of 1909 and the model prisoners' aid statute worked out by the Superior Prison Council in 1908.

Professor van Hamel has the last word; and very fitting, too, since it is an announcement of his retirement from his university chair at seventy, as Dutch law requires. Characteristic is his last sentence, which summarizes his whole teaching, and for that matter restates one of the principles which he helped to draw up twenty-five years ago, and which has been a guiding principle to the I. K. V. ever since: *So rate ich, Abschied nehmend, an erster Stelle zur Ausbildung und Fortbildung der Richter.*

It is, perhaps, ungracious to add a word of criticism, but it seems a pity that so important a book (for it is a book despite the fact that

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it is issued as only a bulletin) should go out unprovided with an adequate index. It is to be hoped that this notable record of substantial achievement will prove an inspiration to the American branch of the I. K. V.

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GEFANGNISRECHT UND RECHT DER FURSORGEERZIEHUNG. By *Professor Dr. Berthold Freudenthal*. Sonderabdruck aus Band V. *Enzyklopädie der Rechtswissenschaft in systematischer Bearbeitung*. Siebente Aufl. 1914.

The central doctrine of this constitution of a German scholar who knows American conditions well, is that the essential regulations of correctional institutions should be contained in the national law. In the German Empire the criminal code is national, while the prison regulations are issued by administrative boards of the several states. Under a constitutional government all that affects the rights of persons and the interests of the people should be under the control of the legislature which represents the people. The danger of imposing unequal penalties on convicts, and of adding to the deprivation of liberty, injury to the body or loss of property, is considerable. Such matters should not be subject to caprice or to administrative arbitrariness. A certain range of discretion in details is admitted to be desirable. The Wisconsin Industrial Commission is working at a similar problem. (See J. R. Commons: "Labor and Administration.")

One could wish that this very competent author had discussed more fully the basis on which the law should rest, whether tradition, or assumed "principles" applied deductively, or induction from experience and results of trial. If the inductive method is to be used, then room must be provided for experimentation. The author gives generous acknowledgment of the improvements introduced in America; but these are largely due to the freedom of individual initiative and variety of experiment in the various states. We must admit that this variety and freedom have produced many undesirable effects, and that our statistical records are too imperfect to be reliable exhibits of actual results; but the advantages are great. Would it not be possible to bring our administration under a "law of correction," while maintaining at least some of the advantages of variety of methods? There should be some safe middle ground between ossification by statute and arbitrary warden-made law which sets the constitution aside for a passing fancy or invention.

Throughout the discussion of systems and methods of various countries are scattered wise suggestions of improvement. The treatment of our reformatories, parole system, "indeterminate sentence" (or "relatively determinate"), and reform schools, is brief but sympathetic and intelligent. The sketch of prison reform contains a remarkable characterization of the historic phases of development in few words. The argument for paying prisoners a gratuity is ingenious and novel. Cellular and community life in prison is treated with discrimination. Alto-